

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) No. 3:10-CR-167
)
)
JERMETRIUS LEVON TURNER,) (PHILLIPS/GUYTON)
)
)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This matter came before the Court on August 30, 2011, for a hearing on Defendant Jermetrius Turner's *pro se* Motion to Substitute Counsel [Doc. 45], filed on August 24, 2011, and appointed defense counsel Attorney Leslie M. Jeffress' Motion to Withdraw as Counsel [Doc. 46], filed on August 25, 2011. Assistant United States Attorney Melissa M. Kirby appeared on behalf of the Government. Attorney Leslie M. Jeffress appeared with Defendant Jermetrius Turner, who was also present, and Attorney Jonathan Wood appeared on behalf of Defendant Joshua Turner, who was also present.

In his *pro se* motion, the Defendant asks the Court to appoint him substitute counsel because he and Attorney Jeffress are conflicting, and because he believes that continuing with Attorney Jeffress as his attorney of record would not be in the interest of justice. In his motion, defense counsel asks the Court to remove him as the attorney of record for the Defendant

because communication between himself and his client has broken down and cannot be recovered. Attorney Jeffress' motion further asserts that he believes he has done all that he can for the Defendant and that the Defendant is not pleased with Attorney Jeffress' services. The Court conducted a sealed, *ex parte* hearing with the Defendant and Mr. Jeffress to learn the nature and extent of the problems between them. The Government did not take a position on either of the two motions. Following the sealed portion of the hearing, the Court found, and the parties agreed, that Defendant Jermetrius Turner's *pro se* Motion to Substitute Counsel [Doc. 45], and Attorney Jeffress' Motion to Withdraw as Counsel [Doc. 46], were moot.

Following the denial of the pending motions as moot, Attorney Jeffress made an oral motion for a continuance of the September 14, 2011 trial date in this case. Neither the Government nor Defendant Joshua Turner had an objection to the requested continuance. The parties agreed to a new trial date of January 31, 2012. The Court finds the motion for a continuance to be well-taken and that the ends of justice served by granting a continuance outweigh the interest of the Defendants and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Given that Defendant Jermetrius Turner did not initially appear for arraignment until seven months after Defendants Joshua Turner and Brittany Wallace, the Court finds that Defendant Jermetrius Turner requires additional time to prepare for trial in this case. In light of the amount of preparation remaining, the Court finds that the Defendant could not be ready for trial by September 14, 2011, or in less than four months. Thus, the Court finds that the failure to grant a continuance would deprive counsel for the Defendant of the reasonable time necessary to prepare for trial despite his use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).

Accordingly, the Court hereby **DENIES** Defendant Jermetrius Turner's *pro se* Motion to Substitute Counsel [**Doc. 45**], and Attorney Jeffress' Motion to Withdraw as Counsel [**Doc. 46**] **as moot**, and **GRANTS** Defendant Jermetrius Turner's oral motion for a continuance. The trial of this matter is reset to **January 31, 2012**. A new motion cut-off deadline is set for **September 16, 2011**, with responses due by **September 30, 2011**. The Court also finds that all the time between Defendant Jermetrius Turner's oral motion for a continuance on **August 30, 2011**, and the new trial date of **January 31, 2012**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(D) & -(7)(A)-(B). A final pretrial conference before the undersigned is set for **January 17, 2012, at 11:00 a.m.** This date shall also be the plea negotiation cut-off deadline. Finally, the Court instructs the parties that all motions *in limine* must be filed no later than **January 16, 2012**. Special request for jury instructions shall be submitted to the District Court no later than **January 20, 2012**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

- (1) Defendant Jermetrius Turner's Motion to Substitute Counsel [**Doc. 45**] and Attorney Jeffress' Motion to Withdraw as Counsel [**Doc. 46**] are **DENIED, as moot**;
- (2) Defendant Jermetrius Turner's oral motion for a continuance is **GRANTED**;
- (3) The trial of this matter is reset to commence on **January 31, 2012, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;
- (4) All time between Defendant Jermetrius Turner's oral motion for a continuance **August 30, 2011**, and the new trial date of **January 31, 2012**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;

(5) A final pretrial conference before the undersigned is set for **January 17, 2012, at 11:00 a.m.**;

(6) The plea cut-off deadline in this case is **January 17, 2012**;

(7) Pretrial motions shall be filed by **September 16, 2011**, with responses due by **September 30, 2011**;

(8) Motions *in limine* must be filed no later than **January 16, 2012**; and

(9) Special requests for jury instructions with the appropriate citations to authority shall be submitted to the District Court no later than **January 20, 2012**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge